IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10557 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ABDULGANI ALIAS GANI DHOBI

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner

MS PUNANI, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 24/04/2001

ORAL JUDGEMENT

1. The petitioner has been detained under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short) by virtue of an order passed by Commissioner of Police, Baroda City,

Baroda, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), dated the 11th September, 2000.

2. The grounds of detention indicate that the detaining authority took into consideration two offences registered against the petitioner as well as statements of three anonymous witnesses. Identity of the witnesses has not been disclosed by the detaining authority in exercise of powers under Section 9(2) of the PASA Act. The detaining authority also considered the possibility of resorting to less drastic remedies, but came to conclusion that, considering the illegal and anti-social activities of the petitioner as a bootlegger, it is necessary to immediately prevent him from pursuing his activities. The detaining authority came to conclusion that detention under PASA Act is the only efficacious remedy that can be resorted to, to immediately prevent the petitioner from pursuing his activities.

3. The only contentions that are raised by Ms. Datta are that, so far as the registered offences are concerned, there is delay in passing the order while considering the first registered office which is of the 1st March, 2000. So far as the second offence of prohibition registered with Karelibaug Police Station is concerned, certain documents were demanded by the detenu by a representation dated the 29th September, 2000, which came to be supplied only on the 20th November, 2000 by the authority concerned. Ms. Datta, submitted that the subjective satisfaction recorded by the detaining authority for the need for exercise of powers under Section 9(2) of the PASA Act, cannot be considered as genuine. In order to substantiate her submission, Ms. Datta submitted that the statements were recorded on the 7th, 8th and 9th September, 2000, they were verified by the detaining authority on the 11th September, 2000 and the order of detention is passed on the 11th September, 2000. She submitted, therefore, that there was no time for the detaining authority to give consideration to the question of correctness and genuineness of the facts stated by the witnesses and the fear expressed by the witnesses, respectively, in their statements. The exercise of powers under Section 9(2) of the PASA Act is improper and has resulted into denial of right of making an effective representation as contemplated under Article 22(5) of the constitution. Ms. Datta, therefore, submitted that, in light of the decision of a Division Bench of this Court in the case of Kalidas Chandubhai Kahar v. State of Gujarat & Ors., 1993(2) GLR 1659 and Ranabhai Bhikhabhai v. State of Gujarat as reported in

2000(3) GLR 2696, this petition may be allowed.

4. The petition is opposed to by learned Assistant Government Pleader, Ms. Punani. She submitted that the grounds of detention are vocal enough to indicate proper exercise of powers. She, therefore, urged that the petition may be dismissed.

5. It is clear from the grounds of detention that the detaining authority has taken into consideration the statements of three anonymous witnesses. The authority came to a conclusion that the fear expressed by the these witnesses is correct and genuine and, therefore, the authority exercised powers under Section 9(2) of the PASA Act by not disclosing the identity of the witnesses. This Court is at loss to appreciate how the detaining authority could have arrived at this conclusion in such short spell. The detaining authority has not filed any affidavit in reply. It is, therefore, not possible to know as to what were the factors and material considered by the detaining authority besides the statements of the anonymous witnesses to come to conclusion that the fear expressed by the witnesses was genuine, that the incidents stated by the witnesses were correct and that there was need for exercise of powers under Section 9(2) of the PASA Act. In light of what is observed in the case of Kalidas Kahar and Ranabhai Bhikhabhai (supra), it is amply clear that the detaining authority had no time to genuinely satisfy itself about the genuineness of the fear expressed by the witnesses and need for exercise of powers under Section 9(2) of the PASA Act. The powers appear to have been exercised mechanically and without application of mind. Statements of these anonymous witnesses, therefore, cannot lend support to the order of detention.

6. So far as registered offences are concerned, the first registered offence is of the 1st March, 2000 as compared to the order of detention passed after six months on the 11th September, 2000 and, therefore, there is delay in passing the order. So far as the second offence is concerned, it is of the 4th September, 2000. In respect of this offence, a representation was made on the 29th September, 2000 and certain papers were demanded. The papers were supplied only on the 20th November, 2000, i.e. nearly after two months. This has adversely affected the right of the detenu of making an effective representation and, therefore, his continued detention would stand vitiated.

7. In view of the above discussion, the petition is allowed. The impugned order of detention dated the 11th September, 2000 is passed against the detenu-Abdulgani alias Gani Dhobi Mohmadbhai Shaikh (Dhobi) is hereby quashed. The detenu is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs. Direct service is permitted.

[A.L. DAVE, J]

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